

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

CHRISTOPHER J. EARL,

Petitioner,

v.

ORDER

Civil File No. 07-156 (MJD/FLN)

JOAN FABIAN, Commissioner,
Minnesota Department of Corrections,

Respondent.

Katherine Menendez, Office of the Federal Defender, Counsel for Petitioner.

Kimberly R. Parker, Minnesota Attorney General's Office, Counsel for Defendant.

The above-entitled matter comes before the Court upon the Report and Recommendation of United States Magistrate Judge Franklin Noel dated February 25, 2011. [Docket No. 81] Petitioner filed objections to the Report and Recommendation.

Pursuant to statute, the Court has conducted a de novo review of the record. 28 U.S.C. § 636(b)(1); Local Rule 72.2(b). Based upon that review, the Court **ADOPTS** the Report and Recommendation of United States Magistrate

Judge Noel dated February 25, 2011. The Court further emphasizes that “clearly established Federal law” “refers to the holdings, as opposed to the dicta, of [the United States Supreme] Court’s decisions as of the time of the relevant state-court decision.” 28 U.S.C. 2254(d); Carey v. Musladin, 549 U.S. 70, 74 (2006) (citation omitted). The Court denies a certificate of appealability because it concludes that no “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right.” Slack v. McDaniel, 529 U.S. 473, 484 (2000).

Accordingly, based upon the files, records, and proceedings herein, **IT IS
HEREBY ORDERED:**

1. The Court **ADOPTS** the Report and Recommendation of United States Magistrate Judge Franklin Noel dated February 25, 2011 [Docket No. 81].
2. Petitioner’s Petition for Writ of Habeas Corpus [Docket No. 1] is **DENIED** and **THIS ACTION IS DISMISSED WITH PREJUDICE**.
3. The Court denies a Certificate of Appealability is this case.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: June 20, 2011

s/ Michael J. Davis

Michael J. Davis
Chief Judge
United States District Court